REPORT OF THE FERC PRACTICE SECTOR OF THE PRACTICES STEERING COMMITTEE

This report covers significant Federal Energy Regulatory Commission (FERC or Commission) practice and procedural developments, including appellate court decisions, major FERC orders and rulemakings and administrative actions, from July 1, 2022, through June 30, 2023).*

* The Committee thanks Joey Lee Miranda, Gizelle Wray, Jonathan Namazi, Russell Kooistra, Sandra Safro Osborn, Chimera N. Thompson, Sylwia Dakowicz, Kegan Nelson, Emily Hutchins, Alec Peters, Quintessa Davis, Sahara Shrestha, Caitlin Wilkinson, and Lauren Temento Evans for their contributions to this report.

I. PROCEDURAL HOLDINGS FROM FEDERAL COURTS

A. Sierra Club, et al., v. FERC, Case Nos. 20-1512 and 21-1040 (consolidated) (May 26, 2023)

On May 26, 2023, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") issued an opinion in *Sierra Club v. FERC*[1] that remanded FERC's orders regarding the Mountain Valley Pipeline to enable FERC to prepare a supplemental environmental impact statement addressing unexpect-

1. 68 F.4th 630 (D.C. Cir 2023).

edly severe erosion and sedimentation along the pipeline's right-of-way or to better explain why one is unnecessary. In doing so, however, the D.C. Circuit held that, among other things, the petitioners were not required to file a new petition for review after FERC issued a subsequent order that modified its notice of denial of rehearing by operation of law in order for the D.C. Circuit to have jurisdiction to hear challenges to the subsequent order.[2] Moreover, the D.C. Circuit held that after issuing the notice of denial of rehearing by operation of law, FERC was limited to updating and modifying the denial of rehearing rather than granting rehearing of it.[3]

II. FEDERAL ENERGY REGULATORY COMMISSION RULEMAKINGS

A. FERC Issues Final Rule to Amend the Uniform System of Accounts to Account for Renewable Assets

On June 29, 2023, FERC published Order No. 898 to amend the Uniform System of Accounts for public utilities and licensees to update accounting and reporting treatment of certain renewable assets.[4] The Order creates new subfunctions and accounts "for wind, solar, and other renewable generating assets."[5] It will also create a new functional class and accounts for energy storage assets.[6] The rule creates new accounts and codifies accounting treatment for environmental credits.[7] Finally, the rule creates new accounts for computer hardware, software, and communication equipment not already included within existing functions.[8] The changes reflect the need for FERC to maintain uniformity, transparency, and consistency in accounting with the rapid changes in technology and resource mix in the U.S. energy sector.[9] The rule will go into effect January 1, 2025.[10]

B. FERC Finalizes Credit Risk Management Rule

On June 15, 2023, FERC issued Order No. 895 amending § 35.47 of Title 18 of the Code of Federal Regulations to require that regional transmission organizations (RTOs) and independent system operators (ISOs) have tariff provisions that permit them to share among themselves credit-related information regarding market participants in organized wholesale electric markets to ensure that credit practices in those markets result in jurisdictional rates that are just and reasonable.[11]

---

2. *Id.* at 646.

3. *Id.* at 645-46 (stating that FERC "retained authority to 'modify or set aside' its original orders in response to the arguments raised on rehearing, '[u]ntil the record in [the] proceeding [was] filed in [the] court of appeals.'") (citing 15 U.S.C. § 717r(a) (2018)).

4. Order No. 898, *Accounting and Reporting Treatment of Certain Renewable Energy Assets*, 183 FERC ¶ 61,025 (2023).

5. *Id.* at P 1.

6. *Id.*

7. *Id.*

8. Order No. 898, *supra* note 4, at P 1.

9. *Id.*

10. *Id.* at P 155.

11. Order No. 895, *Credit-Related Information Sharing in Organized Wholesale Electric Markets*, 183 FERC ¶ 61,193 (2023).

FERC explained that the ability of RTOs/ISOs to share credit-related information among themselves will improve their "ability to accurately assess market participants' credit exposure and risks related to their activities across organized wholesale electric markets."[12] FERC added that the ability to share credit-related information should prompt RTOs/ISOs to respond to credit events more quickly and effectively, thereby reducing the risks of "unexpected defaults by market participants."[13]

C. FERC Approves Incentive Rate Treatment for Cybersecurity Investments

On April 21, 2023, FERC issued Order No. 893, revising its regulations to provide incentive-based rate treatment for electric energy utilities by encouraging new, voluntary investments in advanced cybersecurity technology and participation in cybersecurity threat information sharing programs.[14] The regulations were revised to comply with the Infrastructure Investment and Jobs Act of 2021.[15] The Commission, referencing the Cybersecurity Act of 2015, defines Advanced Cybersecurity Technology to mean "any technology, operational capability, or service, including computer hardware, software, or a related asset, that enhances the security posture of public utilities through improvements in the ability to protect against, detect, respond to, or recover from a cybersecurity threat."[16] These incentives are available to any utility, public or non-public, that have or will have a cost-of-service rate on file with the Commission.[17] Utilities currently making sales pursuant to market-based rate authority may receive incentives by making a filing to recover their cost-of-service, including costs related to eligible cybersecurity investments and make sales exclusively under that cost-based rate.[18]

In order to receive the incentive-based rate treatment, the utility must establish that the cybersecurity investment will "materially improve" cybersecurity and is not already mandated by NERC or other local, state or federal directives.[19] A utility may not request incentive treatment if it has been incurring cost on the investment for more than three months prior to its application.[20] The Commission will consider several sources, including recommendations from the FBI and NSA, when determining whether an investment will "materially improve" cybersecurity.[21] The Commission also established criteria for evaluating information sharing programs which include whether the program: "(1) is sponsored by the federal or state government; (2) provides two-way communications from and to electronic

12. *Id.* at P 1.
13. *Id.*
14. Order No. 893, *Incentives for Advanced Cybersecurity Investment*, 183 FERC ¶ 61, 033 at P 1 (2023).
15. *Id.* at P 3.
16. *Id.* at P 27.
17. *Id.* at 23.
18. Order No. 893, *supra* note 14, at P 26.
19. *Id.* at P 35.
20. *Id.* at P 53.
21. *Id.* at P 28.

industry and government entities; and (3) delivers relevant and actionable cybersecurity information to program participants from the United States electricity industry."[22]

To determine the type of investments eligible for the cybersecurity incentive, the Commission adopted a list of prequalified investments (the PQ List) of eligible investments, including participation in the Cybersecurity Risk Information Sharing Program (CRISP), which creates a rebuttable presumption for applicants.[23] The Commission also adopted a case-by-case approach, which does not create a rebuttable presumption but allows utilities "greater flexibility than the PQ List . . . to respond to cybersecurity threat."[24] The NOPR for the regulation proposed two rate incentives including the Cybersecurity Return on Equity (ROE) Incentive and the Cybersecurity Regulatory Asset (RA) Incentive.[25] The Commission "decline[d] to adopt an ROE incentive adder" and concluded "that the Cybersecurity Regulatory Asset Incentive satisfies that statutory obligation to benefit customers . . . ."[26] Any utility granted the incentive (Regulatory Asset Incentive or RAI) "must amortize the regulatory asset for up to five years" and "may defer eligible expenses for up to five years from the date of Commission approval . . . ."[27] Eligible expenses include "operation and maintenance expenses, labor costs, implementation cost, network monitoring, and training costs."[28] Utilities may request approval of incentives for cybersecurity investments by filing a Federal Power Act (FPA) section 205 filing or by filing a petition for declaratory order followed by an FPA section 205 filing.[29] The Commission adopted the NOPR proposal regarding reporting requirements, "require[ing] utilities to submit informational reports to the Commission for the duration of the cybersecurity incentive . . . ."[30] The Final Rule became effective on July 3, 2023.

D. FERC Issues Revised Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules

On November 17, 2022, FERC issued Order No. 884, which requires natural gas pipelines to submit all supporting statements schedules and workpapers accompanying Natural Gas Act section 4 rate filings with "all links and formulas included."[31] While the Commission's regulations required live links and formulas for certain schedules (Schedules, I, J and certain portions of Schedule H), this rule expands the requirement to all statements, schedules and workpapers.[32] The Com-

22. Order No. 893, *supra* note 14, at P 31.

23. *Id.* at PP 37, 56.

24. *Id.* at P 68.

25. *Id.* at P 120.

26. Order No. 893, *supra* note 14, at P 85.

27. *Id.* at P 108.

28. *Id.* at P 147.

29. *Id.* at P 114.

30. Order No. 893, *supra* note 14, at P 123.

31. Order No. 884, *Revised Filing and Reporting Requirements for Interstate Natural Pipelines,* 181 FERC ¶ 61,121 at Summary (2022), *order on reh'g,* Order No. 884-A, 182 FERC ¶ 61,144 (2023).

32. Order No. 884, *supra* note 31, at P 3.

mission stated that adoption of this requirement would remove ambiguity, eliminate information gaps, allow rate case participants to better analyze and manipulate the data without the need to create their own rate case models, allow more prompt analysis of rate case filings, and reflect improved technology.[33]

On March 1, 2023, the Commission issued Order No. 884-A, which addressed requests for rehearing and clarification.[34] The rehearing requests challenged the Commission's decision not to presume that the links and formulas submitted with rate case filings are public. The Commission stated that the comments had indicated potential grounds for seeking confidential treatment, and that parties to the rate proceeding could obtain confidential information by providing executed protective agreements.[35] The Commission also declined to extend these requirements to other filings, links between filing materials in other rate cases, to materials not part of the rate case filing, to Statements O and P, or to filings by other parties in NGA Section 4 or 5 proceedings.[36]

E. FERC Issues Notice of Proposed Rulemaking Adding a Submittal Requirement to the Duty of Candor

On July 28, 2022, FERC issued a Notice of Proposed Rulemaking (NOPR) to add a requirement that all entities communicating with FERC or other specified organizations related to a matter subject to the jurisdiction of FERC submit accurate and factual information.[37] Prior to this NOPR, there has not been a broadly applicable regulatorily-established duty to communicate with candor for FERC market participants.[38] The proposed change would revise FERC's market behavior rule, 18 C.F.R. 35.41(b), to include communications with FERC, its staff, and certain organizations involved in natural gas pipeline approval.[39] The proposed rule allows an entity to raise an affirmative defense where it has exercised due diligence to avoid such situations.[40] The proposed rule would broaden FERC's Office of Enforcement's authority to investigate potential violations while also increasing the group of participants subject to the regulation.[41] The deadline for comments on the NOPR was October 11, 2022.

F. FERC Issues Notice of Proposed Rulemaking on Applications for Permits to Site Interstate Electric Transmission Facilities

On December 15, 2022, FERC issued a NOPR proposing a new rule that would revise existing regulations governing the applications for permits to site

33. *Id.* at P 6.
34. *See generally* Order No. 884-A, *supra* note 31.
35. *Id.* at P 24.
36. *Id.* at PP 28-30.
37. Notice of Proposed Rulemaking, *Duty of Candor*, 180 FERC ¶ 61,052 (2022).
38. *Id*. at P 20.
39. *Id*.
40. *Id*. at P 1.
41. 180 FERC ¶ 61,052, at P 43.

electric transmission facilities.[42] The proposed rule was in response to the passage of the Infrastructure Investment and Jobs Act (IIJA) which amended section 216 of the Federal Power Act (FPA).[43] FERC explained that the proposed changes seek to "ensure consistency with the IIJA's amendments to FPA Section 216, to modernize certain regulatory requirements, and to incorporate other updates and clarifications" to improve the permit application process.[44] The proposed rule contains several proposed changes to its regulations to implement the IIJA's section 216 Amendments. Notably, the revisions include amending the definition of "national interest electric transmission corridor" to include areas expected to experience transmission capacity congestion.[45] The deadline for comments on the NOPR was April 17, 2023.

III. FERC POLICY STATEMENTS

A. Oil Pipeline Affiliate Committed Service; PL23-1

On December 16, 2022, FERC issued a proposed policy statement that would revise its policy for evaluating whether contractual committed transportation service complies with the Interstate Commerce Act where the only shipper to obtain the contractual committed service is the pipeline's affiliate.[46] Specifically, FERC proposed (1) a safe-harbor mechanism pipelines may use to demonstrate that Affiliate-Only Committed Service rates are just, reasonable, and not unduly discriminatory, and (2) standards for evaluating whether Affiliate-Only Committed Service non-rate terms offered in the open season were structure to unduly discriminate against nonaffiliates.[47] FERC requested comments on the proposed guidance by February 13, 2023, and Reply Comments were due by March 30, 2023. Commissioner James Danly dissented from the proposed policy statement, stating that the proposed policies are nearly identical to those proposed two years ago in the policy statement on *Oil Pipeline Affiliate Contracts* and that the majority ignored comments that "exposed profound weaknesses" with the proposal.[48] Commissioner Mark Christie concurred, noting his agreement that affiliate transactions require higher scrutiny and that, while the draft statement seemed complex, he was willing to concur to put it out for comment.[49]

---

42. Notice of Proposed Rulemaking, *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022).

43. *Id*. at P 1.

44. *Id*.

45. *Id*. at P 2.

46. Proposed Policy Statement, *Oil Pipeline Affiliate Committed Service*, 181 FERC ¶ 61,206 (2022).

47. *Id.* at P 10.

48. *Id.* at P 2 (Danly, Comm'r, dissenting).

49. *Id.* at PP 2-4 (Christie, Comm'r, concurring).

IV. FERC ACTION REGARDING NERC RELIABILITY STANDARDS

A. FERC Issues Order Approving Reliability Standard CIP-003-9

On March 16, 2023, FERC issued an order approving the Reliability Standard proposed by the North American Electric Reliability Corporation (NERC) which added new requirements focused on supply chain risk management for low impact bulk electric system (BES) Cyber Systems.[50] In addition to the new requirements, FERC approved the associated violation risk factors and violation security levels, the proposed implementation plan, and the retirement of the previous Reliability Standard CIP-003-8.[51] The approved Reliability Standard requires responsible entities to include the topic of "vendor electronic remote access security controls" in their cyber security policies and requires responsible entities with assets containing low impact BES Cyber Systems to have methods for determining and disabling vendor electronic remote access.[52] NERC's proposed modifications follow recommendations of the 2019 NERC Supply Chain Risk Assessment.[53] The new Reliability Standard CIP-003-9 will become effective on the first day of the first calendar quarter thirty-six months following this Order.[54]

B. FERC Issues Final Rule Directing NERC to Create New Critical Infrastructure Protection Cybersecurity Standards for Internal Network Monitoring Systems

On January 19, 2023, FERC issued Order No. 887, directing NERC "to develop new or modified Critical Infrastructure Protection (CIP) Reliability Standards that require internal network security monitoring (INSM) for CIP-networked environments for all high impact bulk electric system (BES) Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity."[55] Under Order No. 887, the new CIP Reliability Standards must address the need for responsible entities to (1) "develop baselines of their network traffic inside their CIP-networked environment," and (2) "monitor for and detect unauthorized activity, connections, devices, and software inside the CIP-networked environment."[56] The new standards must also require responsible entities to "identify anomalous activity to a high level of confidence by: (1) logging network traffic; (2) maintaining logs and other data collected regarding network traffic; and (3) implementing measures to minimize the likelihood of an attacker removing evidence of their tactics, techniques, and procedures from compromised devices."[57]

---

50. *Order Approving Reliability Standard C-003-9*, 182 FERC ¶ 61,155 at P 1 (2023).

51. *Id*.

52. *Id*. at P 4.

53. *Id*. at P 6.

54. 182 FERC ¶ 61,155, at P 9.

55. Final Rule, *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, 182 FERC ¶ 61,021 at P 1 (2023).

56. *Id*. at P 5.

57. *Id*.

Order No. 887 also requires NERC to submit, within twelve months of the final rule, a report that "studies the feasibility of implementing INSM at all low impact BES Cyber Systems and medium impact BES Cyber Systems without external routable connectivity."[58] FERC emphasized that the feasibility study should include a determination of (1) the "ongoing risk to the reliability and security of the Bulk-Power System posed by low and medium impact BES Cyber Systems that would not be subject to the new or modified Reliability Standards" and (2) the "potential technological or other challenges involved in extending INSM to additional BES Cyber Systems, as well as possible alternative mitigating actions to address ongoing risks."[59]

C. FERC/NERC Inquiry into Reliability Standard CIP-014-3

Due to an increase in reports of physical attacks on electric substations, on December 15, 2022, FERC directed NERC to evaluate the effectiveness of Reliability Standard CIP-014-3 (Physical Security Reliability Standard) in mitigating the risks to the BPS associated with physical attacks.[60] On April 14, 2023, NERC submitted a report on its study evaluating the Physical Security Reliability Standard.[61] NERC explained that the purpose of the Physical Security Reliability Standard is to "identify and protect Transmission stations and Transmission substations, and their associated primary control centers, that if rendered inoperable or damaged as a result of a physical attack could result in instability, uncontrolled separation, or Cascading within an Interconnection."[62] The Physical Security Reliability Standard is applicable to Transmission Owners and requires that Transmission Owners perform periodic risk assessments for certain substations to identify which are critical to BPS reliability, to perform an evaluation of potential physical security threats and vulnerabilities of a physical attack to each critical substation, and develop and implement a documented physical security plan to address those threats and vulnerabilities.[63]

In its Report, NERC found that the objective of the Physical Security Reliability Standard appropriately focuses limited industry resources on risk to the most critical facilities.[64] However, NERC acknowledges that additional data could show that additional substation configurations would warrant assessment under the Physical Security Reliability Standard.[65] NERC found that the language of the

58. *Id*. at P 1.

59. 182 FERC ¶ 61,021, at P 7.

60. Order Directing Report, *North American Electric Reliability Corporation*, 181 FERC ¶ 61,230 (2022).

61. Letter from North American Electric Reliability Corporation to Kimberly D. Bose (April 14, 2023) (Re: NERC, *Evaluation of the Physical Security Reliability Standard and Physical Security Attacks to the Bulk-Power System*, FERC Docket No. RD23-2) [hereinafter *Evaluation of the Physical Security Reliability Standard*].

62. *Id.* at 4 (citing Reliability Standard CIP-014-3 (Physical Security), Section A.3, Purpose. Reliability Standard CIP-014-3 is available at https://www.nerc.com/pa/Stand/Reliability%20Standards/CIP-014-3.pdf.).

63. *Evaluation of the Physical Security Reliability Standard*, at 4.

64. *Id.*

65. *Id.*

Requirement should be refined to ensure entities conduct effective risk assessments.[66] In addition, NERC stated that it plans to continue its evaluation and worked with FERC to host technical conferences.[67]

FERC and NERC held a technical conference on August 10, 2023 to discuss physical security of the BPS, including the adequacy of existing physical security controls, challenges, and solutions.[68] Reliability Standard CIP-014-3 (Physical Security) was discussed, including panels on the applicability of the standard and minimum levels of physical protection, as well as solutions beyond the standard, physical security best practices, and operational preparedness and planning a more resilient grid.

V. FERC ACTIONS REGARDING EXTREME WEATHER

A. FERC Finalizes Plans to Boost Grid Reliability in Extreme Weather Conditions

On June 15, 2023, FERC issued two final rules, Order No. 896[69] and 897.[70] Both rules were established after the severe weather event Winter Storm Uri that occurred in February 2021. The health, economic, and catastrophic outcome of this extreme weather event caused the Commission to hold a technical conference titled Climate Change, Extreme Weather, and Electric System Reliability to assess how the Commission should address reliability gaps, and the issues surrounding the threat to the electric system reliability posed by climate change and extreme weather events.[71]

Order No. 896 addressed concerns pertaining to transmission system planning for extreme heat and cold weather events that impact the reliable operation of the bulk-power system.[72] This final rule was developed to address the challenges associated with planning for heat and cold weather events, particularly those that occur during periods when the bulk-power system must meet unexpectedly high demand.[73] At the June technical conference, Climate Change, Extreme Weather, and Electric System Reliability, panelists concluded that transmission planners cannot simply project historical weather patterns forward to effectively forecast the future, since climate change has made the use of historical weather observations obsolete.[74]

---

66. *Id.* at 5.

67. *Evaluation of the Physical Security Reliability Standard*, at 4.

68. Final Notice of Joint Technical Conference, *North American Electric Reliability Corporation*, FERC Docket No. RD23-2-000 (May 30, 2023).

69. Order No. 896, *Transmission System Planning Performance Requirements for Extreme Weather*, 183 FERC ¶ 61,191 (2023).

70. Order No. 897, *One-Time Informational Reports on Extreme Weather Vulnerability Assessments Climate Change, Extreme Weather, and Electric System Reliability*, 183 FERC ¶ 61,192 (2023).

71. *Climate Change, Extreme Weather, and Electric System Reliability*, FERC Docket No. AD21-13-000 (Mar. 19, 2021).

72. Order No. 896, *supra* note 69, at P 4.

73. *Id.* at P 4.

74. *Id.* at PP 5-6.

Historically, NERC Reliability Standard TPL-001-4 was developed to establish transmission system planning performance requirements that ensure that the bulk-power system operates reliably over a broad spectrum of system conditions and following a wide range of probable contingencies. Both it and its successor, TPL-001-5.1, include provisions for transmission planners and planning coordinators to study system performance under extreme events based on their experience; however, neither standard specifically requires entities to conduct performance analysis for extreme heat and cold weather, despite the fact that such conditions have clearly demonstrated a risk to the reliable operation of the bulk-power system, thereby leaving a reliability gap in system planning.[75]

Thus, FERC directed NERC to address this reliability gap by developing a new or modified Reliability Standard that requires: (1) the development of benchmark planning cases based on information such as major prior extreme heat and cold weather events and/or future meteorological projections; (2) planning for extreme heat and cold weather events using steady state and transient stability analyses expanded to cover a range of extreme weather scenarios, including expected availability of the resource mix during extreme heat and cold weather conditions, and including the broad area impacts of extreme heat and cold weather; and (3) the development of corrective action plans that mitigate specified instances where performance requirements during extreme heat and cold weather events are not met.[76]

Additionally, Order No. 897 directed transmission providers to file one-time informational reports describing their current or planned policies and processes for conducting extreme weather assessments of their transmission assets and operations.[77] As FERC explained in its NOPR, while weather events have impacted the transmission grid throughout its history, the frequency and severity of extreme weather events is increasing.[78] FERC concluded that this trend threatens livelihoods, electric system reliability, and the Commission's ability to ensure just and reasonable jurisdictional rates.[79]

As a result, FERC directed each transmission provider to file a one-time informational report on its extreme weather vulnerability assessment and risk mitigation efforts.[80] This one-time report required information on whether, and if so how, transmission providers: 1) establish a scope; 2) develop inputs; 3) identify vulnerabilities and exposure to extreme weather hazards; 4) estimate the costs of impacts in their extreme weather vulnerability assessments; and 5) use the results of those assessments to develop risk mitigation measures.[81] The final rule sought to gather information on current and planned policies and processes from transmission providers and did not establish new requirements.[82]

---

75. *Id.* at PP 6-7.
76. Order No. 896 *supra* note 69, at PP 7-8.
77. Order No. 897, *supra* note 70, at P 3.
78. *Id.* at PP 3-4.
79. *Id.*
80. *Id.*
81. Order No. 897, *supra* note 70, at PP 4-5.
82. *Id.*

B. FERC Approves Extreme Cold Weather Reliability Standards

On February 16, 2023, FERC approved NERC's proposed cold weather Reliability Standards, EOP-011-3 (Emergency Operations) and EOP-012-1 (Extreme Cold Weather Preparedness and Operations).[83] These Standards were proposed as Phase 1 of NERC's *Project 2021-07: Extreme Cold Weather Grid Operations, Preparedness, and Coordination* in response to Winter Storm Uri in 2021.[84] They were designed "to advance the reliability of the Bulk-Power System through the implementation of freeze protection measures, enhanced weather preparedness plans, annual training, and the coordination of manual and automatic load shed."[85] Specifically, EOP-011-3 "ensure[s] that each transmission operator implements plans to mitigate operating emergencies and that such plans are coordinated within the reliability coordinator area."[86] The purpose of EOP-012-1 is to "ensure that each generator owner develops and implements plans to alleviate the reliability effects of extreme cold weather on its generating units."[87] Though FERC approved the new Standards, it found that EOP-012-1 "requires improvement," and directed NERC to submit modifications before implementation, additionally waiting to approve an implementation date for EOP-011-3 until those modifications are approved.[88]

C. December 2022 Winter Storm Elliott Inquiry into Bulk-Power System Operations: FERC, NERC and Regional Entity Joint Team Status Update

On December 28, 2022, FERC and NERC "open[ed] a joint inquiry into the operations of the bulk-power system during the extreme winter weather conditions that occurred during Winter Storm Elliott."[89] The purpose of the joint inquiry is for FERC and NERC to "work with other federal agencies, states, and utilities to identify problems with the performance of the bulk-power system and . . . recommend solutions for addressing those issues," where appropriate, through a final report.[90]

---

83. Order Approving Extreme Cold Weather Reliability Standards EOP-011-3 and EOP-012-1 and Directing Modification of Reliability Standard EOP-012-1, *North American Electric Reliability Corporation*, 182 FERC ¶ 61,094 (2023).

84. *See Project 2021-07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination*, NERC, https://www.nerc.com/pa/Stand/Pages/Project-2021-07-ExtremeColdWeather.aspx (last accessed Nov. 12, 2023).

85. 182 FERC ¶ 61,094, at P 15.

86. *Id.* at P 16.

87. *Id.* at P 18.

88. *Id.* at P 3.

89. *FERC, NERC to Open Joint Inquiry into Winter Storm Elliot*t, FERC (Dec. 28, 2022), https://www.ferc.gov/news-events/news/ferc-nerc-open-joint-inquiry-winter-storm-elliott.

90. *Id*.

At the June 2023 Commission Meeting, FERC, NERC, and Regional Entity Joint Team (Joint Team) provided an update on the inquiry and offered its preliminary observations.[91] The Joint Team's recommendations from prior inquiry reports included the need for generating unit cold weather preparedness and better natural gas-electric interdependencies.[92] The Joint Team also highlighted the many similarities between Winter Storm Elliott and past extreme cold weather events, and urged industry to continue the implementation of recommendations from past inquiry reports to prepare for the upcoming winter.[93] FERC Chairman Phillips echoed the Joint Team's call to action by "strongly encourag[ing] the prompt implementation of those" "critical prior inquiry report recommendations" by industry.[94] The joint inquiry is ongoing.

D. The February 2021 Cold Weather Outages in Texas and the South Central United States | FERC, NERC and Regional Entity Staff Report

In November 2021 FERC, NERC, and Regional Entity Staff released a report on the February 2021 Cold Weather Outages in Texas and the South Central United States caused by Winter Storm Uri.[95] The report analyzed the causes of generation outages and offered recommendations to avoid similar events in the future. It found that ERCOT experienced two consecutive days where outages "averaged 34,000 MW of generation unavailable," "equivalent to nearly half of its all-time winter peak load of 69,871 MW."[96] "[W]ith a combined 23,418 MW of manual firm load shed" (20,000 MW in ERCOT), it was the "largest controlled firm load shed event in U.S. history."[97] Over "4.5 million people in Texas lost power," with many deaths attributable to the outages.[98]

The report found that over 1000 units experienced outages, primarily due to freezing and fuel supply issues.[99] By MW of nameplate capacity, 55% of the outages were natural gas generators, 22% were wind, 18% were coal, and the remaining 5% were made up of nuclear, solar, and other. 44% of outages were due to freezing issues, 31% were fuel issues, and 21% were mechanical/electrical issues. Based on its findings, the report issued a variety of recommendations including

---

91. *December 2022 Winter Storm Elliott Inquiry into Bulk-Power System Operations: FERC, NERC and Regional Entity Joint Team Status Update*, FERC, NERC (June 15, 2023), https://www.ferc.gov/news-events/news/presentation-december-2022-winter-storm-elliott-inquiry-bulk-power-system.

92. *Id*. at 3, 9-10.

93. *Id*. at 12.

94. *Statement of Chairman Willie Phillips Regarding Winter Storm Elliott Inquiry*, FERC (June 15, 2023), https://www.ferc.gov/news-events/news/statement-chairman-willie-phillips-regarding-winter-storm-elliott-inquiry.

95. FERC, THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES (2021), https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and [hereinafter THE FEBRUARY 2021 COLD WEATHER OUTAGES].

96. *Id.*

97. *Id.* at 9.

98. THE FEBRUARY 2021 COLD WEATHER OUTAGES, *supra* note 95, at 9.

99. *Id.* at 15.

revisions to mandatory Reliability Standards, improved winterization, addressing gas supply issues and studies on cold weather outage issues.[100]

VI. FEDERAL-STATE TASK FORCE ON ELECTRIC TRANSMISSION

The Joint Federal-State Task Force on Electric Transmission (Task Force), established in 2021, is made up of all five FERC Commissioners and ten state public utility commissioner representatives.[101] The Task Force conducts several formal meetings each year to discuss topics related to efficiently and fairly planning and paying for electric transmission.[102] Task Force meetings are open to the public; any interested party may observe the public meetings of the Task Force and submit comments in the Task Force FERC docket (AD21-15).[103] On July 20, 2022, the Task Force held its fourth meeting at which it discussed: (a) Interregional Transmission Planning & Transmission Project Development; and (b) FERC's NOPR--*Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000 (issued April 21, 2022).[104] On November 15, 2022, the Task Force held its fifth meeting at which it addressed Regulatory Gaps/Challenges in Oversight of Transmission Development.[105] On February 15, 2023, the Task Force held its sixth meeting at which it discussed Physical Security of the Transmission System and heard from two guest speakers: James "Jim" B. Robb, President and Chief Executive Officer, NERC; and Puesh M. Kumar, Director, Office of Cybersecurity, Energy Security, and Emergency Response, U.S. Department of Energy.[106] On July 16, 2023, the Task Force held its seventh meeting, which hosted Dr. Andrew Phillips, Vice President of Transmission and Distribution Infrastructure Sector, Electric Power Research Institute, who spoke on Grid Enhancing Technologies. Specifically, Dr. Phillips' presentation addressed how Grid Enhancing Technologies can provide efficient, reliable systems, and can help save costs for businesses and consumers.

VII. OTHER FERC ISSUANCES

A. Report on the 2022 Assessment of Demand Response and Advanced Metering

In December 2022, FERC staff released its seventeenth annual report on demand response and advanced metering (Assessment), as required by section

100. *Id.* at 18–20.

101. *Order Establishing Task Force and Soliciting Nominations,* 175 FERC ¶ 61,224 at P 3 (2021).

102. *Id.* at P 6.

103. *Id.* at P 4.

104. *Fourth Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC (Jul. 25, 2022), https://www.ferc.gov/media/webcast-fourth-meeting-joint-federal-state-task-force-electric-transmission.

105. *Fifth Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC (Nov. 21, 2022), https://www.ferc.gov/media/joint-federal-state-task-force-electric-transmission-part-5.

106. *Sixth Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC (Nov. 21, 2022), https://www.ferc.gov/news-events/events/sixth-meeting-joint-federal-state-task-force-electric-transmission-02152023.

1252(e)(3) of the Energy Policy Act of 2005.[107] The Assessment addresses the six requirements included in section 1252(e)(3), which directs FERC to identify and review: (a) "saturation and penetration rate of advanced meters and communications technologies, devices and systems;" (b) "existing demand response and time-based rate programs;" (c) "annual resource contribution of demand resources;" (d) potential for demand response as a quantifiable, reliable resource for regional planning purposes;" (e) "steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party;" and (f) "regulatory barriers to improved customer participation in demand response, peak reduction, and critical period pricing programs."[108]

Among other things, the Assessment found:

- "From 2019 to 2020, the number of advanced meters in operation in the United States increased by 8.3 million to a total of 103.1 million, representing an 8.8% [] increase;"[109]
- The total number of advanced meters reported by utilities in five (out of nine) census divisions had advanced meter penetration rates greater than 70%;[110]
- "From 2020 to 2021, demand resource totals increased in the wholesale markets by approximately 1,833 MW to a total of 32,421 MW, representing a 6% annual increase;"[111] and
- "From 2019 to 2020, customer enrollment in retail dynamic pricing programs increased by 1.2 million" or 11.3%,[112] and "customer enrollment in retail incentive-based demand response programs increased by over 732,000" or 6.7%.[113]

B. Office of Enforcement's 2022 Staff Report

On November 17, 2022, FERC's Office of Enforcement released its 2022 Report on Enforcement (Report).[114] In Fiscal Year 2022, the Division of Investigations (DOI) opened twenty-one new investigations, closed seven pending investigations, and negotiated settlements that included approximately $23.59 million in civil penalties and $31.95 million in disgorgement.[115] The Division of Audits and Accounting (DAA) completed twelve audits resulting in fifty-one findings of

107. *2022 Assessment of Demand Response and Advanced Metering*, FERC (Dec. 16, 2022), https://www.ferc.gov/news-events/news/ferc-staff-issues-report-2022-assessment-demand-response-and-advanced-metering.

108. *See generally id.*

109. *Id.* at 9.

110. *Id.* at 11.

111. *2022 Assessment of Demand Response and Advanced Metering*, at 23-24.

112. *Id.* at 33.

113. *Id.* at 31.

114. FERC, *2022 Report on Enforcement*: *AD07-13-016* (Nov. 17, 2022).

115. *Id.* at 6.

noncompliance and 258 recommendations for corrective action, and directed approximately $158 million in refunds and other recoveries.[116] The Division of Analytics and Surveillance (DAS) closed twenty-six electric surveillance inquiries and referred two instances to DOI for investigation.[117] In Fiscal Year 2022, DAS also worked on providing analytical support on about fifty investigations. The Report provides further briefing on significant matters.[118]

C. 2022 State of the Markets (March 16, 2023)

On March 16, 2023, FERC issued its State of the Markets Report, developed by the Office of Energy Policy and Innovation's Division of Energy Market Assessments.[119] The report summarizes key trends in electricity and natural gas markets and notable developments in 2022.[120] Key findings in the report include that (1) "most generation capacity additions came from wind and solar resources;" (2) "most retirements came from coal resources;" (3) "natural gas still holds the largest share of generation at 38.9% in 2022;" (4) "new generating resources encountered interconnection delays;" (5) "higher wholesale electricity prices and higher natural gas prices in 2022;" (6) "largest mean wholesale price increases (over 80%) were in [New York Independent System Operator], Zone J and PJM [Interconnection];" (7) "U.S. [liquefied natural gas] exports grew in 2022, though at a slower pace than in 2021;" (8) a "[w]estern heat wave impacted the Western Interconnection and [California Independent System Operator];" and (9) December's Winter Storm Elliott triggered power outages, primarily in the Southeast.[121]

D. Winter Energy Market and Reliability Assessment 2022-2023 (October 20, 2022)

On October 20, 2022, FERC Staff issued the 2022-2023 Winter Energy Market and Reliability Assessment to the Commission.[122] The assessment provided the "[S]taff's outlook for energy markets and electric reliability, focusing on December 2022 through February 2023."[123] The report focuses on (1) upcoming weather conditions, (2) natural gas and electricity markets, and (3) notable considerations.[124] The first section of the assessment summarized the upcoming winter's weather forecast.[125] The second section summarized natural gas and electricity market conditions, as well as a summary of electric reliability fundamentals expected during the winter.[126] The last section discusses notable considerations for

116. *Id.* at 7.

117. *Id.*

118. *2022 Report on Enforcement*, *supra* note 114, at 7.

119. *2022 State of the Markets Presentation*, FERC 1 (Mar. 16, 2023), https://www.ferc.gov/sites/default/files/2023-03/2022%20State%20of%20the%20Markets.pdf.

120. *Id.* at 2.

121. *Id.* at 2.

122. *Winter Energy Market and Reliability Assessment*, FERC (Oct. 25, 2022), https://www.ferc.gov/media/report-2022-2023-winter-assessment.

123. *Id.* at 1.

124. *Id.*

125. *Id.*

126. *Winter Energy Market and Reliability Assessment*, *supra* note 122, at 1.

the upcoming winter.[127] The considerations included coal supply issues, natural gas dependence in New England, natural gas pipeline outages in the West, and winter preparedness progress.[128]

E. FERC Takes Multiple Actions on Inverter Based Resources

1. FERC Directs NERC to Submit a Work Plan to Register Unregistered IBRs

In November 2022, FERC directed NERC to submit a work plan describing how NERC would identify and register owners and operators of inverter-based resources (IBRs)[129] that are connected to the Bulk-Power System, but not currently required to register, and which have an aggregate, material impact on the reliable operation of the Bulk Power System.[130]

FERC approved NERC's work plan on May 18, 2023.[131] NERC's proposed work plan consisted of three parts: (1) revisions to NERC Rules of Procedure to include generator owner/operator – IBRs (GO-IBRs) as a new registered entity function within twelve months of FERC approval of the plan, (2) identification of candidates for GO-IBR registration within twenty-four months of FERC approval, and (3) registration of GO-IBRs within thirty-six months of FERC approval.[132] NERC plans to register IBRs with (1) an aggregate nameplate capacity between 20 MVA and 75 MVA interconnected at 100 kV or greater, and (2) an aggregate nameplate capacity of 20 MVA or greater interconnected at less than 100 kV.[133] The work plan does not address IBRs connected to local distribution systems, or distributed energy resource IBRs.[134]

2. FERC Issues a NOPR Directing NERC to Develop Reliability Standards to Address Inverter-Based Resource Data Sharing, Model Validation, Planning and Operational Studies, and Performance Requirements

On November 17, 2022, FERC issued a NOPR directing NERC to develop reliability standards for inverter-based resources (IBRs).[135] FERC proposed to require Reliability Standards covering four identified gaps pertaining to IBRs: (1)

---

127. *Id.*

128. *Id.*

129. IBRs are defined as generating facilities that connect to the grid using devices that change direct current power to alternating current power. *Registration of Inverter-Based Resources*, 181 FERC ¶ 61,124 at P 1 n.1 (2022).

130. *Id.*

131. *See* Order Approving Registration Work Plan, *North American Electric Reliability Corporation*, 183 FERC ¶ 61,116 (2023).

132. *Id.* at P 10.

133. *Id.* at P 13.

134. *Id.*

135. Notice of Proposed Rulemaking, *Reliability Standards to Address Inverter-Based Resources*, 181 FERC ¶ 61,125 (2022).

data sharing, (2) model validation, (3) planning and operational studies, and (4) performance requirements.[136]

The proposed rule is designed to address the rapid addition of IBRs to the grid as the generation resource mix changes in the U.S.[137] IBRs present some specific challenges for grid reliability because they are not synchronized to the electric power system.[138] Therefore they will not automatically ride through disturbances to the grid and must be programmed to do so.[139] Current mandatory Reliability Standards were developed when prevalent generation resources were synchronous, unlike IBRs, and do not account for the potential reaction of IBRs to disturbances on the electric system.[140]

FERC's proposed data sharing and model validation will help NERC registered entities obtain the necessary information to predict IBR behavior (including unregistered IBRs, and distributed energy resource IBRs).[141] The proposed IBR planning and operational studies will allow parties to assess the impact of IBRs on the reliability of the Bulk-Power System.[142] Finally, the proposed Reliability Standards will establish technical limits and capabilities for IBRs during normal operation and contingency event conditions.[143] NERC's ultimate Reliability Standards should ensure that IBRs provide frequency and voltage support to the system.[144] Per the NOPR, the engineering and operational aspects of the Standards should address post-disturbance ramp rates and phase-locked loop synchronization.[145]

3. FERC Approves Updated Reliability Standards for IBRs

On November 17, 2022, FERC approved two NERC Reliability Standards: FAC-001-4, and FAC-002-4.[146] The updated Standards make two minor changes to language, recommended by NERC Inverter-Based Resource Performance Task Force.[147] First, NERC is replacing the term "material modification" with the term "qualified change."[148] This is intended to eliminate confusion stemming from the fact that "material modification" is language used in FERC's *pro forma* generator interconnection procedures and agreements.[149] NERC was concerned that facility changes with potentially significant impacts on system reliability would not be studied because parties may believe they only have to report changes having a

136. *Id.* at P 1.
137. *Id.* at P 2.
138. *Id.* at P 3.
139. 181 FERC ¶ 61,125, at P 3.
140. *Id.* at 4.
141. *See id.* at P 5.
142. *Id.*
143. 181 FERC ¶ 61,125, at P 5.
144. *Id.*
145. *Id.*
146. Order Approving Reliability Standards FAC-001-4 and FAC-002-4, *North American Electric Reliability Company*, 181 FERC ¶ 61,126 (2022).
147. *See id.* at P 4.
148. *Id.*
149. *Id.* at P 4 n.8.

"material impact" on other generators in the interconnection queue, as with the *pro forma* generator interconnection procedures.[150] Instead, parties should report any change that could have reliability impacts.[151] NERC has therefore replaced the references to "material modification" with references to "qualified changes."[152]

Second, the updated Reliability Standards identify the planning coordinator as the entity responsible for developing a uniform definition of "qualified changes," to include coordination with other entities and stakeholders.[153] NERC's updates also make ministerial changes to the violation severity levels and risk factors.[154]

NERC's implementation plan would make the Reliability Standards updates effective on the first day of the first calendar quarter 12 months after regulatory approval.[155] Where the planning coordinator's definition of a "qualified change" is different from what entities may have considered a material modification, those entities have an additional 12 months to comply with the updated Standards.[156]

VIII. FERC TECHNICAL CONFERENCES AND WORKSHOPS

A. FERC's Commissioner-led Reliability Technical Conference (November 10, 2022)

On November 10, 2022, FERC convened the annual Commissioner-led technical conference on policy issues related to the reliability and security of the Bulk-Power System.[157] Topics for discussion included: (1) managing the electric grid to advance reliability and (2) managing cyber security threats, the CIP reliability standards, and best practices for the Bulk-Power System.[158] On November 22, 2022, FERC issued a notice inviting post-technical conference comments on issues raised during the technical conference, as well as several specific questions listed in the notice.[159]

150. 181 FERC ¶ 61,126, at P 4.

151. *Id.*

152. *See id.*

153. *Id.* at P 5.

154. 181 FERC ¶ 61,126, at P 7.

155. *Id.* at P 6.

156. *Id.*

157. Notice of Reliability Technical Conference, *Technical Conference*, FERC Docket No. AD22-10-000 (Aug. 23, 2022).

158. *Id.*

159. Notice Inviting Post-Technical Conference Comments, *Reliability Technical Conference*, FERC Docket No. AD22-10-000 (Nov. 22, 2022).

B. Roundtable on Environmental Justice and Equity in Infrastructure Permitting (March 29, 2023)

On March 29, 2023, FERC held a commissioner-led roundtable to discuss environmental justice and equity in its jurisdictional infrastructure permitting processes.[160] The roundtable provided an opportunity for the Commissioners and staff to engage with environmental justice community members, advocates, researchers, industry representatives, and government leaders on actions the Commission can take to better incorporate environmental justice and equity considerations into its decisions.[161] The discussion focused on identifying and addressing adverse impacts associated with permitting applications for hydroelectric, natural gas pipeline, liquified natural gas, and electric transmission infrastructure subject to FERC's jurisdiction.[162] The Commission explained that the roundtable would help further its goals on the Commission's Equity Action Plan, which includes reducing barriers to meaningful participation faced by underserved communities and ensuring that the Commission's natural gas and hydroelectric policies and processes are consistent with environmental justice principles.[163]

C. Office of Public Participation WorkshOPPs

To facilitate increased public participation in Commission processes and decision-making, FERC's Office of Public Participation (OPP) has organized virtual public workshops ("WorkshOPPs). The first, held on August 30, 2022, was a staff-led virtual workshop on filing comments in FERC proceedings. FERC Staff discussed how consumers and consumer advocates can file comments on the record using FERC's eFiling and eComment online applications.[164] Topics included: (1) FERC fundamentals and FERC Online applications, (2) how to file comments in a rulemaking using eFiling, and (3) tips for FERC Online applications.[165] The workshop included a video demonstration of the steps involved in filing a comment.[166] The workshop also had a question-and-answer portion.[167]

On February 23, 2023, FERC staff convened a virtual workshop titled "Tips For Powerful Comments" to discuss tips for writing powerful comments.[168] The workshop featured Commissioner James Danly and directors from the Office of Energy Projects, the Office of Energy Market Regulation, and the Office of Energy

160. *Roundtable on Environmental Justice and Equity in Infrastructure Permitting*, FERC Docket No. AD-23-5-000 (Mar. 29, 2023), https://www.ferc.gov/news-events/events/roundtable-environmental-justice-and-equity-infrastructure-permitting.

161. *Id.*

162. *Id.*

163. *Id.*

164. Notice of Virtual Workshop, *WorkshOPP on filing comments,* FERC Docket Nos. AD22-11-000, AD21-9-000 (Jul. 11, 2022).

165. Supplemental Notice of Workshop, *WorkshOPP on Filing Comments,* Docket Nos. AD22-11-000, AD21-9-000 (Aug. 17, 2022).

166. *Id.*

167. *Id.*

168. Notice of Virtual Workshop, *WorkshOPP On "Tips for Powerful Comments,"* Docket Nos. AD22-11-000, AD21-9-000 (Jan. 25,2023).

Policy and Innovation.[169] The participants shared their views on the role of comments in Commission decision-making to support increased and effective public participation.[170] Additional workshops are planned for the fall of 2023.

D. Technical Workshop on Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements

On December 5 and 6, 2022, FERC convened a staff-led workshop to discuss whether and how the Commission could establish a minimum requirement for interregional transfer capability for public utility transmission providers in transmission planning and cost allocation processes.[171] Topics for discussion included: (1) how to determine the need for and benefit of setting a minimum requirement for Interregional Transfer Capability; (2) what to consider in establishing a potential Interregional Transfer Capability requirement, including who would be responsible for determining a minimum Interregional Transfer Capability requirement and what would be the objective and drivers of such a requirement; (3) what process could be used in establishing a minimum Interregional Transfer Capability requirement to determine key data inputs, modeling techniques, and relevant metrics; and (4) how costs for transmission facilities intended to increase Interregional Transfer Capability should be allocated and how to ensure a minimum amount of Interregional Transfer Capability is achieved and maintained.[172] On February 28, 2023, FERC issued a notice requesting post-workshop comments on issues raised during the workshop, as well as several specific questions listed in the notice.[173]

E. Transmission Planning & Cost Management Tech Conference

On October 6, 2022, FERC convened a Commissioner-led technical conference on transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes.[174] Topics for discussion included: (1) the role of cost management measures in ensuring the cost-effective identification of local transmission needs (e.g., planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates; and (3) potential approaches to providing enhanced cost management

169. *Id.*

170. *Id.*

171. *Staff-Led Workshop on Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements*, FERC Docket No. AD23-3-000 (Nov. 18, 2022), https://www.ferc.gov/news-events/events/staff-led-workshop-establishing-interregional-transfer-capability-transmission.

172. *Id.*

173. *Id.*

174. Notice Inviting Post-Technical Conference Comments, *Staff-Led Workshop on Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirement*, FERC Docket No. AD23-3-000 (Nov. 18, 2022), https://www.ferc.gov/news-events/events/staff-led-workshop-establishing-interregional-transfer-capability-transmission.

measures and greater transparency and oversight if needed to ensure just and reasonable transmission rates.[175] On December 23, 2022, FERC issued a notice inviting post-technical conference comments on issues raised during the technical conference, as well as several specific questions listed in the notice.[176]

F. 2022 and 2023 New England Winter Gas-Electric Forums

FERC held two New England Winter Gas-Electric Forums to discuss the electricity and natural gas challenges facing the New England region. The objective of these Forums was to achieve greater understanding among stakeholders in defining the electric and natural gas system challenges in the New England region. During the September 8, 2022 Forum, panelists discussed the historical context of New England gas-electric challenges as well as concerns regarding the 2022/2023 winter and future winters.[177] Based on the identified challenges and concerns, panelists also discussed the various factors that contribute to these challenges over different time horizons as well as next steps. During the June 20, 2023 Forum, panelists discussed the role of the Everett Marine Terminal during the 2023/2024 and 2024/2025 winters as well as the preliminary results of adequacy studies for winter 2027 conducted by the Independent System Operator of New England (ISO-NE) and the Electric Power Research Institute (EPRI).[178] Based on the preliminary results, panelists also discussed potential infrastructure and market design solutions as well as next steps.[179]

G. PJM Capacity Market Forum

On June 15, 2023, FERC held the PJM Capacity Market Forum to "solicit varied perspectives on the current state of the PJM capacity market, potential improvements to the market, and to consider related proposals to address resource adequacy."[180] The Forum consisted of three panels.[181] The first panel explored whether the existing capacity market was achieving its objectives; the second focused on market design reforms that could better achieve the objectives of the capacity market.[182] The third panel was a roundtable discussion with various state representatives.[183] Participants discussed the need to address the substantial upcoming thermal resource retirements combined with an increase in intermittent

175. Supplemental Notice of Technical Conference, *Transmission Planning and Cost Management*, FERC Docket No. AD22-8-000 (Oct. 4, 2022).

176. Notice Inviting Post-Technical Conference Comments, *Transmission Planning and Cost Management*, FERC Docket No. AD22-8-000 (Dec. 23, 2022).

177. Supplemental Notice of New England Winter Gas-Electric Forum, Docket No. AD22-9-000 (Sept. 6, 2022).

178. Supplemental Notice of Second New England Winter Gas-Electric Forum, Docket No. AD22-9-000 (May 26, 2023).

179. *Id.*

180. *PJM Capacity Market Forum*, FERC (July 5, 2023), https://www.ferc.gov/news-events/events/pjm-capacity-market-forum-06152023; *see* Supplemental Notice of Forum, *PJM Capacity Market Forum*, FERC Docket No. AD23-7-000 (Apr. 19, 2023).

181. *Id.*

182. *Id.*

183. *Id.*

resources, in addition to issues of gas-electric coordination.[184] PJM raised the possibility of switching to a seasonal or hourly market, as well as improving accreditation to accurately reflect a resource's contribution to resource adequacy.[185] Finally, participants also discussed the possibility of switching to a prompt market or including both short- and longer-term auctions.[186] PJM plans to release proposed capacity market reforms in Fall 2023.[187]

IX. FERC ISSUES A NOTICE OF INTENT TO UPDATE THE UPLAND EROSION CONTROL, REVEGETATION AND MAINTENANCE PLAN, AND THE WETLAND AND WATERBODY CONSTRUCTION AND MITIGATION PROCEDURES

On March 10, 2023 FERC published a Notice of Intent to Update the Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures).[188] The Plan and Procedures were last updated in May, 2013.[189] The Plan and Procedures detail baseline mitigation measures to minimize erosion, enhance revegetation, and minimize project-related disturbance to wetlands and waterbodies.[190] FERC solicited comments on modifications to the Plan and Procedures from stakeholders and parties with expertise with respect to environmental issues surrounding natural gas pipeline projects.[191] Comments closed May 9, 2023.[192] FERC anticipates issuing draft changes to the Plan and Procedures in late 2023 for public comment.[193]

X. CONGRESSIONAL ACTION

A. Oversight Hearing Before the Senate Energy and Natural Resources Committee (May 4, 2023)

On May 4, 2023, the Senate Energy and Natural Resources Committee held a full committee hearing to conduct oversight of FERC.[194] The hearing focused on reliability issues in the face of cyber-attacks, fossil fuel retirement, severe

184. *PJM Capacity Market Forum*, *supra* note 180.

185. *Id.*

186. *Id.*

187. *Id.*

188. Notice of Intent to Update the Upland Erosion Control, *Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures and Request for Comment*, 88 Fed. Reg. 16,429 (proposed Mar. 10, 2023).

189. *Id.*

190. FED. ENERGY REG. COMM'N, UPLAND EROSION CONTROL, REVEGETATION, AND MAINTENANCE PLAN 1 (2013); FED. ENERGY REG. COMM'N, WETLAND AND WATERBODY CONSTRUCTION AND MITIGATION PROCEDURES 1 (2013).

191. *Notice of Intent To Update the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures and Request for Comments*, 88 Fed. Reg. at 16,429 (Mar. 17, 2023).

192. *Id.*

193. *Id.*

194. Senate Committee on Energy & Natural Resources, Committee Hearing to Conduct Oversight of FERC (May 4, 2023), https://www.energy.senate.gov/hearings/2023/5/full-committee-hearing-to-conduct-oversight-of-ferc#:~:text=The%20hearing%20will%20be%20held,Energy%20Regulatory%20Commission%20(FERC).

weather, and policies that promote intermittent renewable energy generation. During opening remarks, Committee Chairman Senator Joe Manchin of West Virginia expressed his concern with electricity reliability and affordability, noting that more must be done to ensure Americans have power during extreme cold weather conditions. FERC Chairman Willie Phillips echoed this concern, urging that the Commission continue to implement measures to protect against cyber and physical attacks and extreme weather events. FERC Commissioner James Danly noted that electric markets are in a reliability crisis because, in his view, FERC has allowed state subsidies and policies to push more renewable resources onto the market, driving generators without subsidies to premature retirement. FERC Commissioner Allison Clements explained that Since Winter Storm Uri, FERC has made progress on several recommendations proposed by NERC, including the new Cold Weather Reliability Standards to improve extreme cold weather operations, preparedness, and coordination. Commissioner Clements also expressed her desire to see the industry improve the existing grid with grid-enhancing technologies and encouraged the use of distributed energy resources and demand response. Lastly, FERC Commissioner Mark Christie expressed his concerns that the United States is headed towards catastrophic circumstances because more reliable resources are retiring at a pace far too great than the industry can keep up. Commissioner Christie stated that the problem is not the addition of renewable resources, but the subtraction of dispatchable natural gas and coal.